IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

CRP.No. 94 of 2004()

CMA.39/2003 of PRL.SUB COURT,IRINJALAKUDA
I.A.1668/03 IN OS.884/2003 of ADDL.M.C.,IRINJALAKUDA

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REVN. PETITIONER: APPELLANT/PLAINTIFF

RADHAMANI, D/O.KUNJIPILLA AMMA,
THALIYAKKATTIL HOUSE, PORATHISSERY HOUSE,
KARUVANNUR DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ
SRI.DINESH R.SHENOY

RESPONDENTS/ RESPONDENTS/DEFENDANTS

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1. PONNU @ SAROJA DEVI, D/O.PUTHENVEETTIL
AMMINI AMMA, PORATHISSERY VILLAGE, KARUVANNUR
DESOM, MUKUNDAPURAM TALUK.

2. MARY JOSE, W/O.ADATTUKARAN
CHITTILAPILLY LATE JOSE, PORATHUSSERY VILLAGE,
KARUVANNUR DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.240 OF 2004 IN C.R.P.NO.94 OF 2004

DISMISSED

23.8.2004 SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE,J.

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C.R.P.No.94 of 2004

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Dated: 23rd August, 2007

ORDER

Under challenge in this C.R.P. is the order of the learned Munsiff dismissing an application for interim mandatory injunction and the judgment of the learned Subordinate Judge confirming the learned Munsiff's order.

2. It was very strenuous and appealing submissions which were addressed before by Mr.T.N.Manoj, learned counsel for the petitioner. He invited my attention to Annexures A1 and A2, the two Commissioners Reports which were submitted to the court. He would cite a judgment of G.Sasidharan,J. in **Appukuttan Nair v. Hydrose** (2004(1) KLT 350) and argue that it was the duty of the court to direct maintenance of status quo ante by allowing the application for mandatory injunction. The learned counsel would draw my attention to the relevant averments in the plaint and submit that what has been claimed was a motor way. Learned counsel would place before me the plan submitted by the Commissioner along with his second report and submit that through the middle of the pathway 9 concrete posts have now been installed by the respondents. Counsel submits that it is the above high handed action of the respondents which has

now been condoned by the courts below which seem to think that the courts are powerless in like situations.

3. Mr.G.Sreekumar(Chelur), counsel for the respondents would resist the submissions of Mr.Manoj. He submitted that the court was not inclined to pass any temporary prohibitory injunction order against the respondent and even the order directing status quo was passed only after the second visit of the Commissioner. It could not be said that concrete pillars were installed in violation of any orders passed by the courts below. The counsel submitted that what is claimed by the petitioner is that pathway is not on the property of the respondents. What the respondents have done is to instal 7 more concrete pillars so as to mark the boundary of the respondents property which already stood marked by two pillars. The suit, according to the learned counsel, is ripe for trial and the trial court can be directed to expedite the trial of the suit.

4. Having considered the rival submissions addressed at the Bar and the ratio emerging from the decision of Sasidharan,J. (supra), I am of the view that the facts obtained in that case is distinguishable from those obtaining in this case. Of course, there is power in courts

to direct maintenance of status quo ante if it is seen that such status quo has been disturbed by somebody not necessarily in violation of any interim orders. As far as the present case is concerned, I do not think that this court can set aside the impugned order and direct maintenance of status quo ante though commission report reveals that the status quo has been disturbed during the pendency of the suit. As rightly noticed by the court below, even after the installation of the concrete pillars sufficient space has been left open over what is claimed to be the pathway so as to enable petitioner's access to his property which concededly is not his residential property. The question whether the petitioner was having a motor way or not is a matter to be decided in the suit. The parameters to be applied while invoking jurisdiction under Section 115 of the C.P.C. are well known. When the impugned orders gauged by applying those parameters, it cannot be said that the impugned orders are vitiated to the extent of justifying interference under Section 115. At any rate, those orders do not suffer from jurisdictional infirmities. I approve the impugned orders. However, I direct the learned Munsiff to special list the suit for trial in the earliest available special list and take a decision in the

suit uninfluenced by any finding entered in the impugned orders. The learned Munsiff will, if he becomes inclined to decree the suit in favour of the petitioner, ensure that appropriate effective orders are passed so that the concrete pillars are removed at the earliest.

The C.R.P. is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**